

Hon. James Maxson  
Julie Hettinger

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-180

**JULIE HETTINGER**

**APPELLANT**

**VS.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
JOE MEYER, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for an evidentiary hearing on February 5, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Julie Hettinger, was present and was not represented by counsel. Appellee, Education and Workforce Development Cabinet, was present and was represented by the Hon. James Maxson. Also appearing as Agency representative was Mark White, Director, Division of Human Resources.

**BACKGROUND**

1. Appellant, Julie Hettinger, was a Federally Funded Time Limited (FFTL) employee, who was employed as a Workforce Development Specialist I. She filed a timely appeal from her termination. Appellant provided the following statement relating to her appeal:

I was told my services were no longer needed. Actually, I was never told that. The letter dated June 28, 2012, states that my services "will no longer be needed." It is my belief that I was terminated because I made complaints to my supervisor about sexual harassment. I was informed by another coworker that this person was one of her "favorites."

2. By letter dated July 12, 2012 (under the signature of Mark A. White, Appointing Authority), the Appellant was informed of her dismissal. A copy of that letter is attached hereto as **Recommended Order Attachment A**.

3. By Interim Order dated September 25, 2012, it was established that at issue shall be the Appellant's claim that she was terminated from her FFTL position due to retaliation for having reported sexual harassment by her coworker against her. As the burden of proof lay with the Appellant, she went first in the presentation of evidence.

4. Appellant called **Gary Wise** as her first witness. Wise is an Operations Administrator in the Office of Employment and Training, and was Appellant's second-line supervisor. Wise was asked why Appellant was dismissed. He responded that her first-line supervisor, Judy Fowler, complained that Appellant had difficulties following directions, as well as policy and procedure. He added that Appellant also made an inappropriate comment regarding Fowler's alleged sexual orientation. The comment Appellant made to Fowler, her supervisor, was: "You seem to take a lot of time off to be with your woman."

5. Wise stated that he "guessed" Appellant had a good relationship with customers, but he was not her first-line supervisor, so he did not observe her on a daily basis. He did state that he was unaware of any customer complaints about her. He described her job performance as "adequate."

6. Wise was questioned whether another coworker, Lek Daugherty, had made complaints about sexual harassment. Wise answered that Daugherty informed him that some customers had come in to use the office computers provided for their use (for job search purposes), but had accessed inappropriate websites. Wise stated when this issue was brought to management's attention; the customers were escorted out of the building.

7. Wise also recalled an employee (he could not recall her name) had complained that a customer had touched her thigh. That customer was also escorted out of the building.

8. Wise was asked if Appellant had ever complained about remarks made to her by a coworker named Ricky Green, specifically that he had said to her: "Every time you're around my big toe hurts." Wise stated that the day Appellant was dismissed, June 28, 2012, she informed him of this alleged remark. Wise discussed the issue with Green, who denied saying that to Appellant.

9. Wise denied that he had ever personally observed Green flirting with customers or asking for their phone numbers, but he did concede that "one or two" customers had, in the past, complained to management about Green's flirting.

10. Wise was asked to address an e-mail Judy Fowler wrote to Wise on June 27, 2012, introduced as Appellant's Exhibit 1. In the e-mail Fowler complains to Wise that Appellant had refused to take lunch at 11:30 because Appellant had plans. When Fowler asked Appellant to explain the reason she could not take an earlier lunch, Appellant responded that "it is none of your business." Appellant then made, according to Fowler, a "statement that was an outrageous, unfounded statement against my character" (referencing Appellant's comment about "spending time with your woman.") The last paragraph of the e-mail states:

I have counseled with her on her work not being up to par, her inappropriate attire for a professional office setting, her tardiness in not beginning work at eight o'clock, not listening when supervisors were attempting to train her rather than

her arguing with them, asking for time off to pickup boyfriend's children, taking 1/2 hour lunches to either leave early or gain comp time which had been explained to her could not take place without asking supervisor or posada for permission to do so.

In my 22 years of service here I have never encountered such blatant insubordination.

Wise was asked if this e-mail is what led to her termination. He answered, "It was one of many reasons."

11. Wise was asked to list the specific incidences that led to Appellant's termination. Wise answered that Fowler voiced her displeasure with Appellant's failure to follow directions several times. She also reported that Appellant was argumentative and would not respond, or would respond slowly, to directives. And then, when Appellant made the remark about Fowler's sexual orientation, that was "the straw that broke the camel's back."

12. On cross-examination, Wise stated that his office is located in Louisville. Most of the employees there are merit, but a federal grant had funded the creation of three FFTL positions. These jobs are temporary in length; the duration of their employment is usually nine months. The purpose of the federal grant was to hire temporary staff to take over more routine duties like managing Unemployment Insurance claims while allowing more seasoned employees to perform intensive one-on-one employment counseling. The Appellant was one of three FFTL employees hired in January, 2012.

13. Wise stated that Appellant's chain of command was: Judy Fowler, Gary Wise, Wilhelmina Cornedi, Connie Schnell, Gina Oney, and Beth Brindley. Wise noted that all of Appellant's supervisors (excepting himself) were women.

14. Wise testified that when Appellant learned her job had been terminated, she came to his office and reported Green's comments. Prior to that day, neither Appellant nor her supervisor, Judy Fowler, had ever reported to Wise that Appellant had been the victim of sexual harassment.

15. Wise testified that Appellant's report of Green's comment did not factor into her dismissal in any way because he "didn't even know of it until after the fact."

16. Wise did address the comment with Green, who denied making it. He also informed Mark White, Director of the Division of Human Resources, of the alleged statement. Wise stated that "because of the timing," he questioned the truth of Appellant's allegation.

17. On redirect examination, Wise stated that he did not look in Appellant's personnel file on the day the decision was made to terminate her employment. Wise did not remember seeing a "written reprimand" in it, but stated that Ms. Fowler "tried to do them informally." He did recall that the June 27, 2012 e-mail (Appellant's Exhibit 1), was in the file, as well as another e-mail chain dated June 21, 2012, in which Fowler addresses Appellant's comment: "I don't quite understand why you wouldn't know that I need relief for lunch since it just happened yesterday. I would ask someone to relieve me, but you seem to get upset when I do your job." (Appellant's Exhibit 2.)

18. **Ricky Green** is a Workforce Development Specialist I, in the Office of Employment and Training, a position he has held for the past five years. He was a coworker of Appellant's and he saw her on a daily basis.

19. Green denied that he "flirted" with or ever hugged Appellant. He also denied that he said, "When you come around me, my big toe gets to aching." Green also denied that he ever "jumped at" Appellant. He did acknowledge he knew Appellant had a boyfriend.

20. On cross-examination, Green was asked if he had a good relationship with Appellant. He answered, "I thought so – we never had a disagreement except for an incident once regarding a workstation issue," which Green discussed with Judy Fowler. Green stated he sensed Appellant was "angry" over the incident. The incident occurred a couple of weeks before Appellant's dismissal.

21. **Brenda Ford** appeared telephonically. She is currently employed as a Workforce Development Specialist I at the Office of Employment and Training. She stated that she often works the front information desk with Ricky Green. She was asked if Green "flirted a lot." Ford answered: "I'm not sure if I would call it flirting. He has a friendly personality and an open way of speaking to people." She denied she had seen him hugging people at work. Ford denied she had ever seen Green act in an inappropriate way toward Appellant or anyone else.

22. **Brad Barnett** appeared telephonically. He is employed through ADECCO but works at the Office of Employment and Training, and performs the same job tasks as a Workforce Development Specialist I. He was asked if he had ever told Appellant that Judy Fowler "had favorites." Barnett responded: "Yes, I said that but I didn't say who they were." Barnett denied he had ever seen inappropriate conduct between Appellant and Ricky Green, although he admitted that Green "had been known" to flirt with customers, explaining: "He [Green] would take a little longer with an attractive woman than with a guy."

23. **Leila Abbott** appeared telephonically. She is employed as a Workforce Development Specialist I at the Office of Employment and Training.

24. Abbott stated that she is a coworker of Ricky Green's. When asked if Green was flirtatious, Abbott answered: "He is friendly." Abbott denied ever hearing Green make sexual comments to Appellant.

25. When asked if Abbott ever saw Appellant act “insubordinate,” she replied, addressing Appellant: “I never saw it take place, but I heard people talking about how you didn’t do what you were asked to do. If someone asked you to do something, you would dispute it, or drag your feet.”

26. **Judy Fowler** appeared telephonically. She was employed as a Workforce Development Consultant and was Appellant’s first-line supervisor. She retired from that position on July 31, 2012.

27. Fowler was asked to address Appellant’s job performance. Fowler testified that it was “Very poor. [Appellant] had issues adjusting to and understanding the job. [She] was really struggling.” Fowler stated she had many conversations with Appellant regarding her problems at work. Ultimately Fowler went to Gary Wise (Appellant’s second-line supervisor), and Connie Schnell (District Manager) to discuss Appellant’s performance issues. Fowler told Wise and Schnell that Appellant’s “work performance was poor. I reported to them a statement [Appellant] made that was completely inappropriate. I left all my concerns in their lap. I wasn’t authorized to discharge [Appellant]. I could only monitor [her] performance.”

28. Fowler was asked if Appellant ever complained to her about Ricky Green. Fowler answered: “No. [Appellant’s] cubicle and his were very close to my office. I heard them talking and laughing. I assumed they were good friends. I never received a comment from [Appellant] that Ricky Green was sexually harassing her.”

29. Fowler admitted that she did recall Appellant recounting some comment about a “big toe,” but “as far as what that was about – I didn’t understand what that meant.” Fowler clarified that she only recollected the word “toe” but denied that Appellant characterized the comment as “sexual harassment.”

30. On cross-examination, Fowler confirmed that Appellant was not a merit state employee but an FFTL employee. FFTL employees are intended “to relieve the strain in the office, but [Appellant] was not effective in that purpose,” Fowler stated. She had problems following instructions and understanding her job tasks. She also was argumentative and would take a long time between customers.

31. Fowler testified that she counseled her verbally on these issues on several occasions, but Appellant was not responsive to her feedback. She reported frequently the problems she was having with Appellant to Gary Wise, including the inappropriate comment Appellant made to Fowler regarding “her woman.”

32. As for the comment Ricky Green made to Appellant, Fowler could not recall exactly how Appellant had presented the statement to her, but was sure Appellant had not framed it as “sexual harassment.” Fowler stated that the comment Green allegedly made “absolutely did not affect the decision to terminate [Appellant].”

33. Appellant, **Julie Hettinger**, testified on her own behalf. She was employed as a Workforce Development Specialist 1 in the Office of Employment and Training from January 17, 2012, until June 28, 2012. She was an FFTL employee, which meant to her that her “job was going to end, but [she] didn’t know when.”

34. Appellant described her job duties as assisting customers with Unemployment Insurance Claims and check processing, as well as assisting in the Resource Room where customers can use designated computers to file claims and do job searches.

35. Appellant stated that she felt she had been discriminated against because she had made complaints about sexual harassment right about the time she was dismissed. She stated that about two weeks before she was terminated, she told her first-line supervisor, Judy Fowler, that she was “having problems” with Ricky Green. Appellant testified that she told Fowler about Green’s “big toe” comment. About four days later, Appellant complained to Fowler that Green “wouldn’t stop flirting” with her, and was making comments about her sundresses. Appellant stated that Fowler merely defended Green and told Appellant her sundresses were inappropriate for the work place. After Fowler defended Green, Appellant stopped going to Fowler with her complaints “because it wouldn’t do any good.”

36. When queried if Appellant had made these complaints to anyone else, Appellant answered: “No, because I felt like I had to follow the chain of command. I felt that Gary [Wise] was intimidating and he made comments about my dresses too, but not that they were inappropriate.

37. Appellant stated that she was not insubordinate and that she did, in fact, do her job well and showed up on time. Appellant testified that Fowler “had her favorites at work.”

38. As for Green, Appellant stated that he hugged her all the time. She told him to stop, but he “blatantly lied and it cost me my job.”

39. Appellant noted that “there are procedures to follow. No written warnings were ever given to me.”

40. As for her comment to Fowler on June 27, 2012, Appellant explained that she had asked Fowler if she could leave early that day. Fowler asked her why she needed to leave early. Appellant explained that she had to take care of her boyfriend’s kids. Fowler responded: “Why do you think you should be able to take time to care for your boyfriend’s kids?” Appellant answered: “Well, you go to the doctor with your woman.”

41. On cross-examination, Appellant testified that she explained to Judy Fowler that Green’s comment to her was sexual in nature. She stated she also believed that she had made Gary Wise aware of Green’s comment before she was terminated.

42. When asked why she disagreed with Wise's stated reason for her termination during his testimony, she answered: "I had very little contact with him." She also denied that there were "records" supporting his opinion that she was insubordinate or exhibited poor work performance.

43. **Paul Brown** appeared telephonically. He was employed as a Workforce Development Specialist 1 in the Office of Employment and Training from January 17, 2012, until his resignation approximately ten months later.

44. Brown denied that he had ever seen Green flirt with the Appellant. He also denied that he had ever heard Green make inappropriate comments to Appellant.

45. **Lek Daugherty** appeared telephonically. She is employed as a Workforce Development Specialist 1 in the Office of Employment and Training.

46. Daugherty denied that she had ever seen Green flirt with Appellant or anyone else. "He is a friendly person," she added. She also never heard Green make a comment about his big toe.

47. At the end of Daugherty's testimony Appellant rested her case. Appellee's Motion for Directed Verdict was **DENIED** by the Hearing Officer.

48. Appellee called its first witness. **Mark White** is the Director of Human Resources, Education and Workforce Development Cabinet. He is also the Appointing Authority for the Cabinet.

49. In June 2012, White received notice from Gary Wise that his office had an FFTL employee he wanted to let go. White explained that "FFTL employees are different. If they are let go, we don't have to list the cause in the dismissal letter. Instead we inform them that they have the right to appeal the decision to the Appointing Authority."

50. The June 28, 2012 letter under White's signature informing Appellant that her services "will no longer be needed," and advising her that she could "petition the appointing authority . . . the opportunity to be heard" was introduced into the record as Appellee's Exhibit 2.

51. The same day Appellant received the dismissal letter, June 28, 2012, she requested a conference with White, which took place telephonically on July 9, 2012. At that time she made accusations to White about Ricky Green, specifically "his comment about his big toe" and claimed that Judy Fowler "played favorites."

52. After hearing the allegations Appellant made about Green, White contacted Gary Wise, Priscilla McCowan (the Cabinet's EEO representative), Ricky Green and Judy Fowler. After discussing the allegations with each of them, he concluded that Appellant's "allegations could not be substantiated, so we proceeded with the termination."



53. Appellant was informed on July 12, 2012, by letter under White's signature that her allegations of sexual harassment in the workplace could not be substantiated, and consequently her separation from employment was upheld (Appellee's Exhibit 3).

54. On cross-examination, White testified that both Wise and Fowler informed him that Appellant made no complaints of sexual harassment to them prior to her dismissal.

55. KRS 18A.005(15) states:

'Federally funded time-limited employee' means an employee in the unclassified service, appointed to a position that is funded one hundred percent (100%) by a federal grant or grants. An employee appointed to a federally funded time-limited position shall be required to meet the minimum requirements for the classification in which he or she is hired and, subject to the provisions of KRS 18A.113, shall serve at the pleasure of the appointing authority during a period of time that shall not exceed the life of the federal grant that funds the position. A federally funded time-limited employee who has been aggrieved by notice of disciplinary action or termination, other than an action based on expiration of the federal grant funding, may petition the appointing authority of the agency for the opportunity to be heard by the appointing authority or his designee prior to the effective date of the disciplinary action or termination. The decision of the appointing authority shall be final except as provided by KRS 18A.095(14) and 18A.140. A federally funded time-limited employee shall not have the right of appeal to the Personnel Board except as provided by KRS 18A.095(14) and 18A.140.

56. KRS 18A.095(14)(a) states:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

57. KRS 18A.140(1) reads:

No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified services because of his political or religious opinions, affiliations, ethnic origin, sex, race or disability. No person over the age of forty (40) shall be discriminated against because of age.

### **FINDINGS OF FACT**

1. The Appellant, Julie Hettinger, was a Federally Funded Time-Limited (FFTL) employee, who was employed by the Office of Employment and Training as a Workforce Development Specialist I.

2. She was hired in January, 2012 and informed by letter dated June 28, 2012, that her services “were no longer needed.”

3. Appellant filed a timely appeal alleging that she was terminated from her FFTL position due to retaliation for having reported sexual harassment by a coworker against her.

4. During her tenure at the Office of Employment and Training, Appellant exhibited behavior that was unacceptable to her supervisor, Judy Fowler, specifically the failure to follow office policies and directives, an argumentative communications style, tardiness and “blatant insubordination.” (Appellant’s Exhibit 1).

5. On June 27, 2012, Appellant made a comment to Fowler regarding “her woman,” which Fowler perceived as an inappropriate statement regarding her sexual orientation. Fowler reported the comment to Appellant’s second-line supervisor, Gary Wise. According to Wise, that statement was “the straw that broke the camel’s back,” and Appellant was informed of her termination the next day.

6. After Appellant learned she was being dismissed, she immediately went to speak to Gary Wise. At this meeting, Appellant informed Wise that her coworker, Ricky Green, had remarked to her “Every time you’re around my big toe hurts.” This was the first time Wise had ever heard Appellant allege that she was the victim of sexual harassment.

7. As for Judy Fowler’s knowledge of Green’s alleged remark, Fowler testified that she recollected Appellant had told her “something about a toe,” but denied that it had ever been characterized by Appellant as sexual harassment. Fowler further testified that she herself did not know what the comment meant.

8. Both Gary Wise and Mark White, the Cabinet’s Director of Human Resources, investigated the alleged comment Green made to Appellant, but could not substantiate it. Likewise, none of the witnesses called by Appellant corroborated that Green had said the remark, or that he had acted inappropriately toward Appellant in any way.

9. The Hearing Officer finds that Appellant’s supervisors were not aware of Appellant’s claim of sexual harassment prior to her dismissal. Consequently, the Hearing Officer finds that Appellant’s complaint of harassment had no bearing in the decision to terminate her employment.

**CONCLUSIONS OF LAW**

1. The Hearing Officer concludes as a matter of law that Appellant has failed to prove by a preponderance of the evidence that her termination from the position of Workforce Development Specialist I was motivated by discrimination or was an act of retaliation for any purpose. What was developed at the evidentiary hearing was that Appellant was an unsatisfactory employee, and that this was the sole reason for her dismissal.

2. The decision to dismiss Appellant under all of the circumstances was not discriminatory or otherwise violative of KRS 18A.005(15), KS 18A.095(14) or KRS 18A.140.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JULIE HETTINGER VS. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2012-180)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

**Any document filed with the Personnel Board shall be served on the opposing party.**

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer Colleen Beach** this 28<sup>th</sup> day of March, 2013.

**KENTUCKY PERSONNEL BOARD**

  
**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof mailed this date to:

Hon. James Maxson  
Julie Hettinger



EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
OFFICE OF THE SECRETARY

Steven L. Beshear  
Governor

Capital Plaza Tower, 3<sup>rd</sup> Floor  
500 Mero Street  
Frankfort, Kentucky 40601  
Phone (502) 564-0372  
Fax (502) 564-5959

Joseph U. Meyer  
Secretary

July 12, 2012

Julie Hettinger

Dear Ms. Hettinger:

On Thursday, June 28, 2012, you were notified that your services as a Workforce Development Specialist I, position number 31008204, with the Office of Employment and Training, were no longer be needed. As an FCTL employee and in accordance with KRS 18A.005(15), you petitioned the Appointing Authority of the agency for the opportunity to be heard.

During the telephonic hearing conducted on July 9, 2012, you made allegations of sexual harassment within the workplace. The hearing concluded with the agreement that an investigation would be conducted by the Appointing Authority. An investigation was conducted on July 12, 2012, and after interviews were conducted, it has been determined that your allegations cannot be substantiated.

With this in mind, your separation dated June 28, 2012, is upheld. The decision of the Appointing Authority shall be final except as provided by KRS 18A.095 (14) and 18A.140. A federally funded time-limited employee shall not have the right of appeal to the Personnel Board except as provided by KRS 18A.095 (14) and 18A.140.

Sincerely,

Mark A. White, Director  
Division of Human Resources  
Appointing Authority

Recommended Order Attachment A